IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

MFA.No. 1400 of 1997()

OPMV.1383/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA

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APPELLANT: RESPONDENT:

K.O.PAULOSE, S/O.OUSEPH,
KIZHAKEDAN HOUSE, PIRAMADOM,
MUVATTUPUZHA.

BY ADV. SRI.P.G.RAJAGOPALAN
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.T.P.KELU NAMBIAR (SR.)

RESPONDENTS: PETITIONERS:

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* 1. PAILY, S/O.PAILY, PARAYANIKKAL VEEDU,
THIRUMARADI, P.O.THIRUMARADI,
ERNAKULAM DISTRICT. ***(DIED)***

Addl. 2. MARIAM (WIDOW)
PARAYANIKKAL VEEDU, THIRUMARADI,
P.O.THIRUMARADI, ERNAKULAM DISTRICT.

Addl. 3. JOSE,
-DO- -DO-

Addl. 4. JOHNY,
-DO- -DO-

Addl. 5. MOLY,
-DO- -DO-

Addl. 6. VALSA,
-DO- -DO-

Addl. 7. AMMINI,
-DO- -DO-

(RESPONDENTS 2 TO 7 WHO ARE THE LEGAL REPRESENTATIVES OF THE DECEASED RESPONDENT ARE IMPLEADED AS ADDITIONAL RESONDENTS, AS PER ORDER, DATED 14.11.2006 IN CMP.No.910/2001)

BY ADV. SRI.BIJU ABRAHAM (R2 to R7)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 1400 of 1997

Dated this the 24th October, 2007.

J U D G M E N T

The sole respondent, owner-cum-driver of the car bearing Registration No.KLO 2110 is the appellant. The appeal is filed against the award passed by the Tribunal awarding an amount of Rs.32,450/= as compensation. The respondent filed the Original Petition claiming a compensation alleging that at about 7.30 p.m., on 14.4.1994, he as hit by a car bearing No.KLO 2110, driven by the appellant in a rash or negligent manner. The first respondent sustained injuries. The vehicle was not covered by a valid policy of insurance. The first respondent claimed an amount of Rs.2,50,000/= as compensation. Appellant admitted the ownership of the vehicle, but denied the averment that the respondent was hit by the car driven by him. According to him, at the relevant point of time, the car was garaged in a workshop for effecting repairs. The quantum of compensation claimed was also disputed. Subsequently, he filed a written statement contending that the vehicle was covered with a valid policy of insurance.

2. Both sides adduced evidence. The respondent gave evidence as PW.1. He examined PW.2, an independent witness, to the accident. He also produced Ext.A1 F.I.R. Registered against the appellant and the scene mahazar, and also the final report. Appellant examined himself and also examined four witnesses. The Tribunal disbelieved the oral evidence tendered by the appellant and accepted the evidence adduced by the respondent. Appreciating the oral evidence of witnesses, the Tribunal came to the conclusion that the appellant's case, that the vehicle was kept in a workshop for effecting repairs is not true. It was further found at the relevant point of time that the vehicle was plying in the road and was driven by the appellant. The Tribunal had occasion to watch the demenour of witnesses. It did not accept the evidence given by the witness of the appellant. Since that is a finding of fact based on the appreciation of the oral evidence given by both sides, there is no scope for interference in this appeal. Further, it is to be noted that a criminal case was registered against the appellant, and police, after investigation, filed a final report alleging that he committed the offence. So, the finding of the Tribunal that the respondent was hit by a car driven by the appellant is perfectly correct and does not call for interference.

3. The appellant produced Exts.B1 and B2. Ext.B1 shows that the vehicle was having valid policy of insurance till 6.4.1994. Subsequently, the policy was renewed with effect from 19.4.1994 only. The accident happened on 14.4.1994. So, on the date of the accident, the vehicle was not covered with a valid policy of insurance. Ext.A5 is the wound certificate and Ext.A6 is the treatment certificate. Ext.A7 series shows that the petitioner had purchased medicine for an amount of Rs.7893.45. He produced documents to show that he spent an amount of Rs.341/= as taxi charges. The Tribunal awarded an amount of Rs.2000/= for loss of earning during the period of treatment. An amount of Rs.8000/= was awarded as treatment expenses, and an amount of Rs.7000/= for transport to hospital, and Rs.10,000/= for pain and sufferings, and Rs.10,000/= under the head loss of amenities, future discomfort etc. The quantum of compensation awarded is also very reasonable, and does not call for interference. So, I do not find any reason to interfere with the award passed in this case, and the appeal is only to be dismissed.

In the result, the appeal is dismissed.

C.M.P.No.5932/1997 in M.F.A.No.1400/1997 is dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.1400 of 1997

J U D G M E N T

Dated:24th October, 2007.